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No. 07-542

In the
Supreme Court of the United States
October Term, 2007

STATE OF ARIZONA,
Petitioner,
vs.

RODNEY JOSEPH GANT,
Respondent.

ON WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

MOTION TO FILE BRIEF and BRIEF AMICI CURIAE of AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, THE NATIONAL SHERIFFS' ASSOCIATION, THE ARIZONA LAW ENFORCEMENT LEGAL ADVISORS' ASSOCIATION and THE ARIZONA ASSOCIATION OF CHIEFS OF POLICE, IN SUPPORT OF PETITIONER.

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

MOTION OF AMICI CURIAE TO FILE BRIEF AND BRIEF AMICI CURIAE 1

INTEREST OF AMICI CURIAE 8

STATEMENT OF THE CASE 8

SUMMARY OF ARGUMENT 9

ARGUMENT

THIS COURT SHOULD REVERSE THE DECISION OF THE ARIZONA SUPREME COURT BECAUSE A SEARCH OF A MOTOR VEHICLE INCIDENT TO ARREST, WHEN THE ARRESTEE IS HANDCUFFED AND IN THE BACK OF A POLICE CAR, HAS BEEN UPHELD BY NEW YORK v. BELTON AND ITS PROGENY; IT IS REASONABLE FOR OFFICERS TO DO A BELTON SEARCH WHILE THE ARRESTEE IS HANDCUFFED AND IN THE BACK OF A PATROL CAR BECAUSE THE BALANCING OF THE STATE INTEREST AGAINST THE ARRESTEE'S PRIVACY INTEREST FALLS ON THE SIDE OF THE GOVERNMENT DUE TO THE LESSER PRIVACY INTEREST AFFORDED MOTOR VEHICLES AND THE LEGITIMATE AND WEIGHTY CONCERN FOR THE SAFETY OF LAW ENFORCEMENT OFFICERS 10

CONCLUSION 19

TABLE OF AUTHORITIES

Cases	Page
Arizona v. Gant, 216 Ariz. 1, 162 P.3d 640 (2007)	8
Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302 (1949)	19
Cady v. Dombrowski, 413 U.S. 433, 93 S.Ct. 2523 (1973)	17
California v. Carney, 471 U.S. 386, 105 S.Ct. 2066 (1985)	16
Cardwell v. Lewis, 417 U.S. 583, 94 S.Ct. 2464 (1974)	16
Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925)	16, 17
Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970)	17
Maryland v. Wilson, 519 U.S. 408, 117 S.Ct. 882 (1997)	11
Menard v. State, 16 Ark. App. 219, 699 S.W.2d 412 (1985)	13
Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983)	12, 17
New York v. Belton, 453 U.S. 454, 101 S.Ct. 2860 (1981)	passim

Pakdimountivong v. Arlington, 219 S.W.3d 401 (Tex. App. 2006) . . . 13

Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977) 12

Ruvalcaba v. City of Los Angeles, 64 F.3d 1323 (9th Cir. 1995) . . . 12

State v. Gant, 213 Ariz. 446, 143 P.3d 379 (Az. App. 2006) 15

State v. Hood, 24 Wash. App. 155, 600 P.2d 636 (1979) 13

State v. Nab, 112 Idaho 1139, 739 P.2d 438 (1987) 13

State v. Ochoa, 189 Ariz. 454, 943 P.2d 814, (App. Div. 1, 1997) . . 12

State v. Rickman, 148 Ariz. 499, 715 P.2d 752 (1986) 13

State v. Shanks, 139 Idaho 152, 75 P.3d 206 (2003) 13

State v. Taras, 19 Ariz. App. 7, 504 P.2d 548 (Az. App. 1972) . . . 17

State v. Walls, 62 S.W.3d 119 (Tenn. 2001) 13

State v. Webster, 170 Ariz. 372, 824 P.2d 768 (App. Div. 2, 1991) . . . 12

Thornton v. United States, 541 U.S. 615,124 S.Ct. 2137 (2004) 11

United States v. Johns, 469 U.S. 478, 105 S.Ct. 881 (1985) 17

United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157 (1982) 17

United States. v. Flores, 359 F.Supp.2d 871 (D. Ariz. 2005) . . 12

Constitution

U.S. Const. Amend. IV . . . . . passim

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MOTION OF AMICI CURIAE TO FILE BRIEF AND BRIEF AMICI CURIAE [1]

This motion and brief is filed pursuant to Rule 37 of the United States Supreme Court. Timely notice of intent to file this brief has been served upon Counsel for each party. Consent to file has been granted by Counsel for the Petitioner. Consent to file has been withheld by the Respondent, making this motion necessary under Rule 37.3(b). The letter of consent of the Petitioner has been filed with the Clerk of this Court, as required by the Rules. The letter of Respondent withholding consent has also been filed with the Clerk.

Americans for Effective Law Enforcement, Inc., the International Association

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This motion and brief were authored for the amici by James P. Manak, Esq., Counsel of Record, Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc., Michael E. McNeff, Esq., Arizona Law Enforcement Legal Advisors' Association and Eric B. Edwards, Esq., Arizona Association of Chiefs of Police. No other persons authored this motion and brief. Americans for Effective Law Enforcement, Inc. made the complete monetary contribution to the preparation and submission of this motion and brief, without financial support from any source, directly or indirectly.

of Chiefs of Police, The National Sheriffs' Association, The Arizona Law Enforcement Legal Advisors' Association and The Arizona Association of Chiefs of Police move this Court for leave to file the attached brief as amici curiae, and declare as follows:

1. Identity and Interest of Amici Curiae. The amici curiae are described as follows:

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as amicus curiae over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), was founded in

1893 and is the largest organization of police executives and line officers in the world. IACP's mission, throughout the history of the association, has been to identify, address and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America. It conducts programs of training, publications and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

The Arizona Law Enforcement Legal Advisors' Association (ALELAA) is an association of attorneys who advise and represent local, state and federal law enforcement agencies. The Arizona Association of Chiefs of Police (AACP) is an association of all of the municipal chiefs of police in Arizona. Both organizations have a keen interest in any legislation, court decision or statement of public policy that affects the authority, effectiveness, safety and welfare of law enforcement officers in the State of Arizona. The members of the ALELAA also

provide a large portion of basic and advanced legal training to Arizona law enforcement officers. The decision of the court below has an adverse effect on the effectiveness and safety of law enforcement officers in Arizona as well as other states. These organizations seek to assist this Court by providing their analysis of the issues and a broader look at the risk to police officers presented by the decision in this case.

2. Desirability of an Amici Curiae Brief. Amici are national and state associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of formulating rules and policies on arrests and searches of vehicles and the safety of police officers in conducting their sworn duties; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of training and policies on the subject.

Because of the relationship with our members and the composition of our membership and directors, including active law enforcement administrators and

counsel, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

3. Reasons for Believing that Existing Briefs May Not Present All Issues. Amici are national and state law enforcement organizations and their perspective is broad. This brief concentrates on policy issues, including the importance of effective rules and procedures for conducting arrests and searches of vehicles and the protection of law enforcement officers from injury and death as they perform their duties. Although the parties clearly are represented by capable and diligent counsel, no single party can completely develop all relevant views of such policy issues as these.

4. Avoidance of Duplication. Counsel of Record for amici curiae, James P. Manak, Esq., has reviewed the facts of this case and has conferred with Counsel for Petitioner and Counsel for Respondent in an effort to avoid unnecessary duplication. It is believed that this brief presents vital policy issues directly related to law enforcement legal and safety concerns that are not otherwise raised by either party.

5. Consent of Parties or Requests Therefor. Counsel has requested consent of the parties. The consent of Petitioner has been received and filed with the Clerk of this Court. This motion is necessary because the Respondent has not granted consent to amici.

For these reasons, the amici curiae request that they be granted leave to file the attached amici curiae brief.

Respectfully submitted,

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INTEREST OF AMICI CURIAE

See Section of Identity and Interest of Amici Curiae, supra.

STATEMENT OF THE CASE

Two uniformed Tucson, Arizona police officers went to a house after receiving a tip of narcotics activity there. When Defendant Rodney Gant answered the door, the officers asked to speak with the owner of the residence. Gant informed the officers that the owner was not home, but would return later that afternoon. After leaving the residence, the officers ran a records check and discovered that Gant had a suspended driver's license and an outstanding warrant for driving with a suspended license. The officers returned to the house later that evening. While they were there, Gant drove up and parked his car in the driveway. Police officers immediately confronted Gant when he drove up and got out of his car. Within minutes, they arrested him, placed him in handcuffs, and locked him in a patrol car; they then promptly searched his car, where they found a pistol and a bag of cocaine. The Arizona Supreme Court, Arizona v. Gant, 216 Ariz. 1, 162 P.3d 640 (2007), held that the warrantless search could not be justified as incident to Gant's arrest because, at the time of the search, there were no exigent

concerns for either officer safety or the preservation of evidence.

A dissenting justice, joined by the Chief Justice of the Arizona Supreme Court, took the position that the majority's reasoning and conclusion were inconsistent with New York v. Belton, 453 U.S. 454 (1981), in which this Court adopted a "bright line" rule for searches of vehicles incident to the arrest of occupants.

SUMMARY OF ARGUMENT

Amici urge this Court to reverse the decision of the Arizona Supreme Court because a search of a motor vehicle incident to arrest, when the suspect is handcuffed and in the back of a police car, has been upheld by New York v. Belton and its progeny. It is reasonable and necessary for officers to do a Belton search while an arrestee is handcuffed and in the back of a patrol car because the balancing of the state's interest against the arrestee's privacy interest falls on the side of the government due to the lesser privacy interest afforded motor vehicles and the legitimate and weighty concern for the safety of law enforcement officers. Law enforcement officers in the United States have relied on the authority set forth in Belton and subsequent cases for many years and to

remove that authority now would create disarray among the courts and law enforcement agencies that the Belton "bright line" rule was designed to eliminate.

ARGUMENT

THIS COURT SHOULD REVERSE THE DECISION BY THE ARIZONA SUPREME COURT BECAUSE A SEARCH OF A MOTOR VEHICLE INCIDENT TO ARREST, WHEN THE ARRESTEE IS HANDCUFFED AND IN THE BACK OF A POLICE CAR, HAS BEEN UPHELD BY NEW YORK v. BELTON AND ITS PROGENY; IT IS REASONABLE FOR OFFICERS TO DO A BELTON SEARCH WHILE THE ARRESTEE IS HANDCUFFED AND IN THE BACK OF A PATROL CAR BECAUSE THE BALANCING OF THE STATE INTEREST AGAINST THE ARRESTEE'S PRIVACY INTEREST FALLS ON THE SIDE OF THE GOVERNMENT DUE TO THE LESSER PRIVACY INTEREST AFFORDED MOTOR VEHICLES AND THE LEGITIMATE AND WEIGHTY CONCERN FOR THE SAFETY OF LAW ENFORCEMENT OFFICERS.

Amici will not repeat the legal arguments put forward by the Petitioner in this case; we do, however, support them. As national and state representatives of law enforcement officers, administrators and legal advisors, we wish to inform the Court of the following policy considerations from our professional perspective.

The decision of the Arizona Supreme Court misses one of the truly important aspects of New York v. Belton, 453 U.S. 454, 101 S. Ct. 2860 (1981), i.e., that courts should give law enforcement officers standardized rules to follow where possible and appropriate. Amici are well aware that standardized rules may not be feasible for all Fourth Amendment legal issues with which officers work. The rule for searches of motor vehicles incident to the arrest of recent occupants crafted by Belton and its progeny, however, is a reasoned standardized rule and one that has been in place for many years in most jurisdictions. This rule has made officers more effective and safe by allowing a fleeting window of authority that minimally impacts the privacy interests of arrested persons.

Since Belton was decided, courts have recognized that traffic stops are an inherently dangerous situation for police officers and suspects. Thornton v. United States, 541 U.S. 615, 124 S.Ct. 2137 (2004) (a custodial arrest and incidental search of a vehicle is fluid and the danger to the police officer flows from the fact of the arrest and its attendant proximity, stress, and uncertainty); Maryland v. Wilson, 519 U.S. 408, 413, 117 S.Ct. 882 (1997) ("Regrettably, traffic stops may be dangerous encounters . . . the fact that there is more than

one occupant of the vehicle increases the possible sources of harm to the officer."); Michigan v. Long, 463 U.S. 1032, 1048, 103 S.Ct. 3469 (1983) (noting ". . . inordinate risk confronting an officer as he approaches a person seated in an automobile."); Pennsylvania v. Mimms, 434 U.S. 106, 110, 98 S.Ct. 330 (1977) ("Indeed, it appears that a significant percentage of murders of police officers occurs when the officers are making traffic stops."); Ruvalcaba v. City of Los Angeles, 64 F.3d 1323 (9th Cir. 1995) (investigative detentions involving suspects in vehicles are especially fraught with danger to police officers); United States v. Flores, 359 F.Supp.2d 871, 876 (D. Ariz. 2005) (". . . dangerous situations can arise if recently stopped persons are allowed to confer out of his [officer's] presence."); State v. Ochoa, 189 Ariz. 454, 943 P.2d. 814, 822 (App. Div. 1, 1997) ("Nor does the fact that an investigating officer may have the person 'under his control' diminish the vulnerability of the officer in such situations when the individual still could bolt and retrieve any weapon[s] in the vehicle."); State v. Webster, 170 Ariz. 372, 824 P.2d 768, (App.Div. 2, 1991) (the court noted the risks that police officers confront when making traffic stops and agreed that the safety of the police officer is a legitimate and weighty concern).

There have been many cases documenting situations in which suspects who were handcuffed and locked in the back seat of police cars, subsequently escaped. Often these escaping suspects subsequently assaulted the arresting officers. For example, see State v. Rickman, 148 Ariz. 499, 715 P.2d 752 (1986) (armed robbery suspect being transported from court opened patrol car door and escaped); Pakdimountivong v. Arlington, 219 S.W.3d 401 (Tex. App. 2006) (suspect handcuffed and in leg restraints, smashed window and jumped from moving patrol car); State v. Walls, 62 S.W.3d 119 (Tenn. 2001) (suspect double cuffed, secured with a rip-hobble device and locked in back of patrol car, escaped by kicking out rear window while the car was moving with two deputies in front seat); State v. Shanks, 139 Idaho 152, 75 P.3d 206 (2003) (suspect handcuffed and put in back of patrol car escapes while deputies complete investigation); State v. Nab, 112 Idaho 1139, 739 P.2d 438 (1987) (reckless driving suspect who was handcuffed and locked in patrol car escapes while officer securing suspect's vehicle); Menard v. State, 16 Ark. App. 219, 699 S.W.2d 412 (1985) (arrested DWI suspect escaped while trooper doing vehicle inventory, was recaptured, then escaped again from moving patrol car); State v. Hood, 24 Wash. App. 155, 600 P.2d 636 (1979) (suspect handcuffed and

in the back of patrol car escaped while deputy interviewing witnesses; after recapture, while handcuffed and in the back of patrol car, suspect attacked deputy while he was driving).

Amici know from experience that the assertion that just because a suspect is handcuffed and in the back of a patrol car he is no longer a threat, is not true. Police officers are trained to always keep watch on a suspect for that exact reason. Prisoners have escaped from maximum security correctional facilities; it is unrealistic to believe they cannot escape from a police car on the street.

Courts should also take into consideration that not all officers have back-up readily available. Every day state police officers, highway patrol officers, deputy sheriffs and other law enforcement officers working in rural areas must deal with similar situations without another officer watching the suspect in custody. These officers risk their lives even when reasonable protective measures are taken.[2]

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[2] Safety is an issue not only for on-the-scene officers, but other officers who may be involved in an inventory of an automobile's contents or other evidence-gathering work. Items such as sharp instruments, needles or firearms pose a safety hazard for on-scene personnel as well as those involved later.

The Arizona Court of Appeals, which was affirmed by the Supreme Court of Arizona, took the position that: "If sensible police procedures require that suspects be handcuffed and put in squad cars, then police should handcuff suspects, put them in squad cars and not conduct the search." State v. Gant, 213 Ariz. 446, 143 P.3d 379, 386 (Az. App. 2006). This view, affirmed by the Arizona Supreme Court, places police officers in the untenable position of making a choice of practicing officer safety or being effective in carrying out their law enforcement duties. The dissenting opinion in the Court of Appeals stated:

> There is, however, a practical and unfortunate effect of today's decision that will encourage police to search an arrestee's immediate area or vehicle without delay and before he or she is safely secured, precisely the real-world danger that Belton and its progeny have sought to ameliorate while balancing the requirements of the Fourth Amendment. State v. Gant, 213 Ariz. 446, 143 P.3d 379, 387 (Az. App. 2006).

This is exactly the concern that Amici have. Officers rely on the courts to give

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Officer safety always remains an important issue in the arrest of suspects.

them the legal tools to be effective in seizing evidence and contraband and at the same time to practice officer safety. The "bright line" rule set forth in Belton and its progeny is one of the most effective tools ever provided by the courts.

Having stated the government's interest in maintaining the effectiveness and safety of law enforcement officers, the other side of the consideration is the privacy interest of the suspect. There is, of course, an expectation of privacy in the interior and contents of a motor vehicle. This interest, however, is a reduced expectation stemming from pervasive regulation of vehicles traveling on highways. California v. Carney, 471 U.S. 386, 105 S.Ct. 2066 (1985). The reduced expectation of privacy also exists due to the mobility of motor vehicles because they can be "quickly moved." Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280 (1925). In some cases, the configuration of the vehicle has contributed to the lower expectation of privacy.

For example, in Cardwell v. Lewis, 417 U.S. 583, 94 S.Ct. 2464 (1974), it was held that, because the passenger compartment of a standard automobile is relatively open to plain view, there is a lesser expectation of privacy. But even

when enclosed "repository" areas have been involved, this Court has concluded that the lesser expectation of privacy warrants application of the automobile exception to the warrant requirement. It has applied the exception in the context of a locked trunk, Cady v. Dombrowski, 413 U.S. 433, 93 S.Ct. 2523 (1973), a sealed package in a car trunk, United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, (1982), a closed compartment under the dashboard, Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975 (1970), the interior of a vehicle's upholstery, Carroll, supra, and sealed packages inside a covered pickup truck, United States v. Johns, 469 U.S. 478, 105 S.Ct. 881 (1985).

All of these cases dealt with probable cause situations, where if there had been time, a warrant could have been issued. But there are other cases authorizing warrantless searches, or limited intrusions, with only reasonable suspicion, such as a "frisk" of a vehicle for weapons, Michigan v. Long, 463 U.S. 1032, 103 S.Ct. 3469 (1983), and a search for vehicle registration when there is reasonable suspicion the vehicle may be stolen, State v. Taras, 19 Ariz. App. 7, 504 P.2d 548 (Az. App. 1972). The search of a motor vehicle incident to arrest of an occupant or recent occupant falls in between these two concepts, making the

lesser expectation of privacy apply in this case. Amici submit that the lesser expectation of privacy in a motor vehicle must fall to the more weighty concern for the effectiveness and safety of law enforcement officers.

The Belton decision and its progeny are many years old. Law enforcement officers throughout the country have relied upon these decisions for decades. They have been trained that this is the correct way to balance the need for effective law enforcement and officer safety. There have been no reports of mass violations of civil rights. There has been no hue and cry from the public concerning this procedure. One can only assume that this is so because the search of motor vehicles incident to arrest, when the suspect is handcuffed and put in the back of a patrol car, is considered reasonable.

Amici are involved in the training of police officers on legal issues in both recruit classes and advanced officer training programs. Most police recruits have not had prior significant exposure to constitutional issues. They are not lawyers and this Court has stated they are not expected to act as lawyers; that these concepts are practical non-technical concepts that deal with the factual and practical considerations of everyday

life on which reasonable and prudent men, not legal technicians act. Brinegar v. United States, 338 U.S. 160, 69 S.Ct. 1302 (1949). Many courts seem to have forgotten this assessment. As a result, it becomes increasingly difficult to train and retrain officers on these concepts.

Amici submit that it is preferable, when possible, for police officers to have a standardized rule that guides them for the sake of their safety and effectiveness and for the sake of the civil rights of those with whom they come in contact. The vast majority of police officers do not want to violate citizens' civil rights, as they realize they enjoy the same rights. Law enforcement officers are taught to respect and protect the civil rights of all persons. They look to the courts for direction on how best to provide that respect and protection. The adoption of "bright line" rules such as Belton and its progeny provide the best guidance and protection for our police officers and our citizens.

CONCLUSION

Amici Curiae respectfully request the Court to reverse the Arizona Supreme Court decision and preserve an effective legal tool that allows law enforcement officers to properly seize evidence and

contraband while practicing officer safety. This rule has made officers more effective and safe by allowing a fleeting window of authority that minimally impacts the privacy interests of arrested suspects. We ask the Court to uphold the constitutionality of the law enforcement conduct involved in this case on the law and as a matter of sound judicial policy.

Respectfully submitted,

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